IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12130 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HANIFABEN MOHAMADBHAI MUGAL - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MS SN QURESHI for Petitioner(s) : 1,
Mr.P.D.Bhate, AGP for Respondent(s) : 1, 3,
RULE SERVED BY DS for Respondent(s) : 2,
M IA SHAIKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 22/08/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner detenu has challenged the detention order dated 29.04.2005 passed by the District

Magistrate, Panchmahals, Godhra in exercise of the powers conferred upon him under sub-section(2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (“the Act” for short), as, the District Magistrate, Panchmahals, Godhra acting under the Act arrived at the subjective satisfaction that it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of supplies of S.K.O., the commodity under Public Distribution System which is essential to the community.

2. Along with the detention order, the detenu was also served with the grounds of detention of the same date.

3. Heard the learned advocate appearing for the petitioner Ms.S.N.Qureshi, learned AGP Mr.Bhate for respondent nos.1, 2 and 3 and Mr.M.A.Shaikh for respondent no.4. Affidavit-in-reply filed on behalf of respondent No. 2 and counter affidavit on behalf of the Union of India were also taken into consideration.

4. Learned advocate appearing on behalf of the petitioner detenu raised manifold contentions. He has drawn the attention of this Court to a document at pages 15 and 51 in the compilation. Upon perusing the said document, it clearly transpires that the said documents are illegible. In that view of the matter, when the detaining authority has taken these documents into consideration, these documents become vital documents affecting the right of the detenu of making effective representation. The facts of this case are squarely covered by the decision in the case of P.S.Chandel Vs. District Magistrate, reported in 1991(2) GLR 753 wherein the Division Bench has observed in para 3 as under.:

“Learned advocate for the petitioner submitted that it is imperative that the detaining authority must serve the grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention. He submitted that the detenu was given the list of documents accompanying the grounds of detention on which the detaining authority relied upon for making the impugned order as stated in the ground of detention to enable the detenu to make an effective representation to the Advisory Board as well as to the detaining authority as mentioned in the ground of detention, but the detaining authority failed to supply legible copy of the relevant document to the detenu which is given at page 195 of the compilation, which affected the detenu's important right of making an effective representation under Art.22(5) of the Constitution of India and, therefore, the order of detention is required to be quashed and set aside. He showed a xerox copy of the document supplied at page 195 of the compilation. On perusing the document, it appears that the document at page 195 is the receipt issued by `Gujarat Rajya Nagarik Purvatha Nigam Ltd.; which is a vital document on which reliance is placed by the detaining authority. Looking to the document, it appears that it is illegible and the name of the prayer on which the rubber

stamp is applied and the contents of the said rubber stamp are not legible. Mr.Tripathi appearing on behalf of the detaining authority drew our attention to the affidavit filed on the aforesaid point which is set out at para 12 of the affidavit-in-reply, the relevant part of which reads as under :

"I submit that the petitioner has been supplied with the entire material relied upon by the detaining authority for the purpose of passing the detention order.... In fact, the entire material has been given in order to enable the detenu to make effective representation. It is also absolutely wrong to say that some of the pages are not legible at all viz. Pages nos. 145, 147, 155, 185 and all the receipts of weigh bridge etc. since more look at the copies supplied to the petitioner – detenu makes it clear that they are absolutely legible..."

The document at page 195 was shown to Mr.Tripathi and he fairly admitted that the said document is not legible."

5. In that view of the matter, it is apparently clear that the detaining authority has failed to supply legible copy of the above referred documents to the detenu for making effective representation, and, therefore, it is in violation of the right of the detenu under Article 22(5) of the Constitution. Under the circumstances, the detention order cannot be sustained and deserves to be quashed and set aside on this ground alone.

4. In view of what is stated above, the petition is allowed. The order of detention dated 29.04.2005 is quashed and set aside. The detenu Kumari Hanifaben Mohamadbhai Mugal is ordered to be set at liberty forthwith if she is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(SHARAD D DAVE, J)

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